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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ERIC STEPHEN FREEZE,

11 Plaintiff,

12 v.

13 DON MCDERMOTT, et al.,

14 Defendants.

CASE NO. C22-1844JLR

ORDER TO SHOW CAUSE

15 In an order dated May 23, 2023, the court dismissed with prejudice and without
16 leave to amend Plaintiff Eric Stephen Freeze's claims against Defendants Donald
17 McDermott, Lisa Janicki, Skagit County, the Ann G. Freeze Revocable Trust, the Ronald
18 L. Freeze Revocable Trust, Elizabeth Gallagher, and Paul Taylor. (5/23/23 Order (Dkt.
19 # 27).) The only remaining Defendant is Jose T. Acuna, a tenant and potential purchaser
20 of the property at issue in this case. (*See, e.g.*, Am. Compl. (Dkt. # 3) at 5, ¶¶ 7-8.)

21 The court has issued several orders regarding Mr. Freeze's efforts to serve Mr.
22 Acuna. First, on March 30, 2023, the court ordered Mr. Freeze to show cause why the

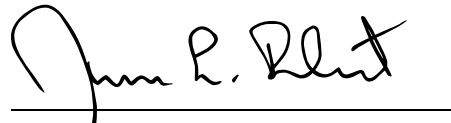
1 court should not dismiss this action for failure to comply with the 90-day deadline for
2 service set forth in Federal Rule of Civil Procedure 4(m). (3/30/23 Order (Dkt. # 5).) In
3 response, Mr. Freeze filed a declaration of service in which Derrill Fussell stated that he
4 had served Mr. Acuna and other Defendants by United States Mail on March 29, 2023.
5 (4/6/23 Decl. (Dkt. # 6).) On April 12, 2023, the court found the purported service was
6 improper because Federal Rule of Civil Procedure 4(e) does not authorize service by
7 United States Mail. (4/12/23 Order (Dkt. # 7) at 3-4.) Accordingly, the court issued an
8 order for Mr. Freeze to show cause why his claims against Mr. Acuna should not be
9 dismissed for failure to properly serve Mr. Acuna under Federal Rule of Civil Procedure
10 4. (*Id.*)

11 On April 17, 2023, Mr. Freeze filed a second declaration of service in which Mr.
12 Fussell again stated that he served Mr. Acuna by United States Mail. (4/17/23 Decl.
13 (Dkt. # 8).) Then, on April 24, 2023, Mr. Freeze filed a third declaration of service in
14 which Kevin Ewing stated that he had served Mr. Acuna at an address in Sedro-Woolley,
15 Washington at 1:05 p.m. on April 19, 2023. (4/24/23 Decl. (Dkt. # 14).) On May 5,
16 2023, the court issued an order in found that Mr. Freeze had successfully served Mr.
17 Acuna and discharged its April 12, 2023 order to show cause. (5/5/23 Order (Dkt. # 21).)

18 After it issued the May 23, 2023 order dismissing all Defendants except Mr.
19 Acuna, the court reviewed its docket in this case. In doing so, the court observed an
20 irregularity in Mr. Ewing's declaration of service. Specifically, Mr. Ewing states that he
21 served Mr. Acuna on April 19, 2023, but the declaration is dated April 7, 2023, twelve
22 days before he purportedly served Mr. Acuna. (*See* 4/24/23 Decl.) As a result, the court

1 is not confident that Mr. Freeze properly served Mr. Acuna with the summons and
2 amended complaint in this case.¹ Therefore, the court VACATES its May 5, 2023 order
3 discharging its April 12, 2023 order to show cause (Dkt. # 21) and ORDERS Mr. Freeze
4 to show cause, by no later than **June 14, 2023**, why the court should not dismiss his
5 claims against Mr. Acuna without prejudice for failure to serve Mr. Acuna in accordance
6 with Federal Rule of Civil Procedure 4(e) and within the 90-day timeframe set forth in
7 Federal Rule of Civil Procedure 4(m). Alternatively, Mr. Freeze may respond to this
8 order, by no later than **June 14, 2023**, with proof that he has properly served Mr. Acuna
9 in accordance with Federal Rule of Civil Procedure 4. If Mr. Freeze does not timely
10 respond to this order or demonstrate good cause for his failure to comply with Federal
11 Rule of Civil Procedure 4, the court will dismiss Mr. Freeze's claims against Mr. Acuna
12 without prejudice.

13 Dated this 24th day of May, 2023.

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16 JAMES L. ROBART
17 United States District Judge
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21 ¹ Mr. Ewing's declaration also states that he served Mr. Taylor on April 19, 2023. (*See*
22 *id.*) Although Mr. Taylor appeared in this case (*see* 5/8/23 Notice (Dkt. # 23)), he has not
challenged whether service was proper (*see generally* Dkt.). Additionally, the court has since
dismissed Mr. Freeze's claims against Mr. Taylor on other grounds. (*See* 5/23/23 Order.)